

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the reasons that follow.

I. Status of the Claims

Claims 1-37 are pending in this application, and claims 1-16, 19, 24, 25, 27-32, 36 and 37 are withdrawn.

Claim 17 is amended to recite “wherein the transfer of the active substance from the administration reservoir to the porous surface is controlled via the absorption of solvent by the solvent removal element.” Exemplary support for this claim language can be found in paragraphs [0037] and [0060] of the present Application as filed.

Claims 18-20, 21, 23, 24, 25, 27, 29, 30, and 32-34 are amended to more clearly state the invention. No new matter has been added with the amendments.

New claims 38 and 39 are added. Exemplary support for this claim language can be found in paragraphs [0037] and [0060] of the present Application as filed.

Applicants believe that each of the rejections raised by the Examiner have been addressed and the application is in condition for allowance. Reconsideration and allowance of the application, as amended, is respectfully requested.

II. Claim Rejections – 35 U.S.C. § 112 ¶ 2

Claim 23 was rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter. Office Action at page 2. Applicants respectfully traverse this ground for rejection.

Applicants have amended claim 23 to remove the numeral “14”, which was the basis for the rejection. No new matter is added. Withdrawal of this ground for rejection is respectfully requested.

III. Claim Rejections – 35 U.S.C. § 102

Claims 17-18, 20-23, 26 and 35 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,374,136 to Murdock (“Murdock”). Office Action at pages 3-4. Applicants respectfully traverse this ground for rejection.

Claim 17, as amended, recites a “device for transdermal administration of at least one active substance to a porous surface”. The device includes a solvent removal element configured to absorb solvent from the administration reservoir by evaporation. The transfer of the active substance from the administration reservoir to the porous surface is controlled via the absorption of solvent by the solvent removal element.

Murdock does not disclose the device recited in Applicant’s claim 17. Specifically, Murdock discloses an “electrotransport delivery device 10” that includes a “reservoir layer 24” that “contains the beneficial agent to be iontophoretically delivered.” See col. 6, lines 14-15 and lines 31-33. Murdock discloses solvent removal as a step in the formation of the reservoir layer to increase the “shelf life” of the device. See col. 5, lines 5-8 and lines 24-29. In other words, solvent removal as taught by Murdock is related to the *manufacture* of “delivery device 10” but is not related to the *use or operation* of “delivery device 10.” In contrast to Murdock, the device of Applicants’ claim 17 includes a “solvent removal element” that provides for control of “the transfer of the active substance from the administration reservoir to the porous surface”, *i.e.*, in contrast to Murdock’s device, Applicants’ claimed device utilizes solvent removal in the *use or operation* of the device.

Because Murdock fails to teach the device of amended claim 17, Applicants respectfully request withdrawal of the rejection of claims 17-18, 20-23, 26 and 35 under 35 U.S.C. § 102(b) based upon Murdock.

IV. Claim Rejections – 35 U.S.C. § 103

Claims 33 and 34 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Murdock in view of U.S. Patent No. 5,993,435 to Haak et al. (“Haak”). Office Action at page 5. Applicants respectfully traverse this ground for rejection.

Claims 33 and 34 depend from independent claim 17. For the reasons discussed above, Murdock fails to teach or suggest a “a solvent removal element configured to absorb solvent from the administration reservoir by evaporation ... wherein the transfer of the active substance from the administration reservoir to the porous surface is controlled via the absorption of solvent by the solvent removal element,” as recited in independent claim 17. Haak does not remedy the deficiencies of Murdock. Specifically, Haak discloses an “iontophoretic delivery device 10” that includes a “donor electrode assembly 8” having “a donor electrode 11, an electrolyte reservoir 13, a selectively permeable separator membrane 14 and an agent reservoir 15” and a “counter electrode assembly 9.” See col. 6, lines 52-54 and col. 7, lines 1-3. However, Haak does not teach or suggest “a solvent removal element configured to absorb solvent from the administration reservoir by evaporation ... wherein the transfer of the active substance from the administration reservoir to the porous surface is controlled via the absorption of solvent by the solvent removal element,” as recited in independent claim 17.

Dependent claims 33 and 34 are patentable over Murdock in view of Haak for at least the following additional reasons. Claim 33, as amended, recites “at least one sensor for measuring a condition of the at least one active substance.” Haak does not teach or suggest such a sensor. Rather, Haak states generally that “[c]ontrol circuit 19 may also include an integrated circuit which could be designed ... to respond to sensor signals in order to regulate the dosage to maintain a predetermined dosage regimen.” Col. 11, lines 3-7. As an example of the signal that the control circuit is responsive to, Haak discusses monitoring “a biosignal” such as blood sugar level. See col. 11, lines 11-15. As such, Haak does not teach or suggest “at least one sensor for measuring a condition of the at least one active substance,” as recited in claim 33.

Accordingly, claims 33 and 34 are patentable over Murdock in view of Haak under 35 U.S.C. § 103(a). Withdrawal of this ground for rejection is respectfully requested.

V. Conclusion

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

It should be noted that, for the sake of clarity and simplicity, Applicants' remarks have focused on the rejections of the independent claims and certain dependent claims set forth in the Office Action with the understanding that the dependent claims are patentable for at least the same reasons as the independent claims. Further, in addressing the Examiner's rejections, Applicants' remarks have set forth only some of the available arguments for patentability of the rejected claims. Applicants expressly reserve the right to argue the patentability of all claims separately and to provide new, different, and/or additional arguments for patentability not set forth herein, including, but not limited to, the failure of cited references to disclose, teach, or suggest other elements of the claims, the lack of motivation to combine cited references, or teaching away from the combination of cited references, in this or any future proceedings.

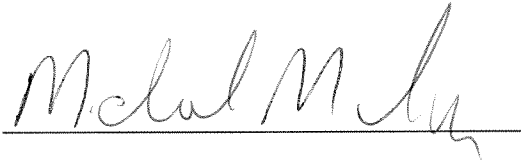
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

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Respectfully submitted,

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